

Morgan Lewis

Melissa D. Hill

Partner
+1.212.309.6318
melissa.hill@morganlewis.com

August 24, 2023

VIA ECF

The Honorable Patrick J. Schiltz
Chief Judge, United States District Court, District of Minnesota
United States District Courthouse
300 South Fourth Street, Courtroom 15
Minneapolis, MN 55415

Re: *Dionicio v. U.S. Bancorp*, Case No. 0:23-cv-00026-PJS-DLM

Dear Chief Judge Schiltz:



Defendants respectfully submit this Notice of Supplemental Authority relevant to their pending Motion to Dismiss Plaintiffs' Amended Complaint (ECF No. 32) to inform the Court of the two recent decisions.

First, in *Fritton v. Taylor Corporation*, No. 22-cv-00415, 2023 WL 5348834 (ECT/TNL) (D. Minn. Aug. 21, 2023), Judge Tostrud dismissed the recordkeeping fee claims in plaintiffs' Amended Complaint because "Plaintiffs do not allege facts plausibly showing that the Plan's recordkeeping fees are unreasonably high" (page 2). A copy of that opinion is attached hereto as Exhibit A.

Second, in *Guyes v. Nestle USA*, No. 20-VC-1560-WCG-SCD (E.D. Wisc. Aug. 23, 2023), Magistrate Judge Stephen C. Dries issued a Report & Recommendation that the court should dismiss with prejudice plaintiffs' recordkeeping claims because, *inter alia*, the plaintiffs' allegations were based on comparisons with plans that were not similarly sized to the Nestle plan and therefore did not provide meaningful benchmarks on which to allege the plan's recordkeeping fees were excessive (page 11). A copy of that Report & Recommendation is attached hereto as Exhibit B.

Morgan, Lewis & Bockius LLP

101 Park Avenue
New York, NY 10178
United States

 +1.212.309.6000
 +1.212.309.6001

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We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Melissa D. Hill

Melissa D. Hill (pro hac vice)
Christopher Diffie (pro hac vice)
William Engelhart (pro hac vice)
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
212-309-6000
212-309-6001 (fax)
melissa.hill@morganlewis.com
christopher.diffie@morganlewis.com
william.engelhart@morganlewis.com

Daniel J. Supalla (#0387064)
Maria S. Agostinho Campbell (#0401778)
Nilan Johnson Lewis PA
250 Marquette Avenue South, Suite 800
Minneapolis, MN 55401
612-305-7500
612-305-7501 (fax)
dsupalla@nilanjohnson.com
MACampbell@nilanjohnson.com

Attorneys for Defendants